

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RONALD D. PEAK,

Plaintiff,

v.

JONATHAN WILSON, *et al.*,

Defendants.

Case No. 3:23-cv-00036-ART-CLB

ORDER

Plaintiff Ronald Peak brings this *pro se* civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while he was incarcerated at Northern Nevada Transitional Housing. (ECF No. 8). On July 11, 2023, this Court ordered Peak to file a first amended complaint by August 11, 2023. (ECF No. 7). The Court warned Peak that this action could be dismissed if he failed to file an amended complaint by the deadline. (*Id.* at 9). The deadline expired and Peak did not file an amended complaint, move for an extension, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)

1 (dismissal for failure to comply with court order). In determining whether to
2 dismiss an action on one of these grounds, the Court must consider: (1) the
3 public's interest in expeditious resolution of litigation; (2) the Court's need to
4 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
5 favoring disposition of cases on their merits; and (5) the availability of less drastic
6 alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,
7 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

8 The first two factors, the public's interest in expeditiously resolving this
9 litigation and the Court's interest in managing its docket, weigh in favor of
10 dismissal of Peak's claims. The third factor, risk of prejudice to defendants, also
11 weighs in favor of dismissal because a presumption of injury arises from the
12 occurrence of unreasonable delay in filing a pleading ordered by the court or
13 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
14 1976). The fourth factor—the public policy favoring disposition of cases on their
15 merits—is greatly outweighed by the factors favoring dismissal.

16 The fifth factor requires the Court to consider whether less drastic
17 alternatives can be used to correct the party's failure that brought about the
18 Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,
19 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*
20 the party has disobeyed a court order does not satisfy this factor); *accord*
21 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002). Courts “need not
22 exhaust every sanction short of dismissal before finally dismissing a case, but
23 must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
24 F.2d 1421, 1424 (9th Cir. 1986). Because this litigation cannot progress without
25 an operative complaint and the plaintiff's compliance with the Court's orders,
26 the only alternative is to enter a second order setting another deadline. But
27 issuing a second order will only delay the inevitable and further squander the
28 Court's finite resources because Peak ignored the first order. Setting another

1 deadline is not a meaningful alternative given these circumstances. So the fifth
2 factor favors dismissal.

3 **II. CONCLUSION**

4 Having thoroughly considered these dismissal factors, the Court finds that
5 they weigh in favor of dismissal. It is therefore ordered that this action is
6 dismissed without prejudice based on Ronald Peak's failure to file an amended
7 complaint in compliance with this Court's July 11, 2023, order and for failure to
8 state a claim. The Clerk of Court is directed to enter judgment accordingly and
9 close this case. No other documents may be filed in this now-closed case. If
10 Ronald Peak wishes to pursue his claims, he must file a complaint in a new case
11 and either pay the required filing fee or file an application to proceed *in forma*
12 *pauperis*.

13 It is further ordered that the application to proceed *in forma pauperis* for
14 non-inmates (ECF No. 6) is granted.

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16 DATED THIS 16th day of August 2023.

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20 ANNE R. TRAUM
21 UNITED STATES DISTRICT JUDGE
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